TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939

No. 394

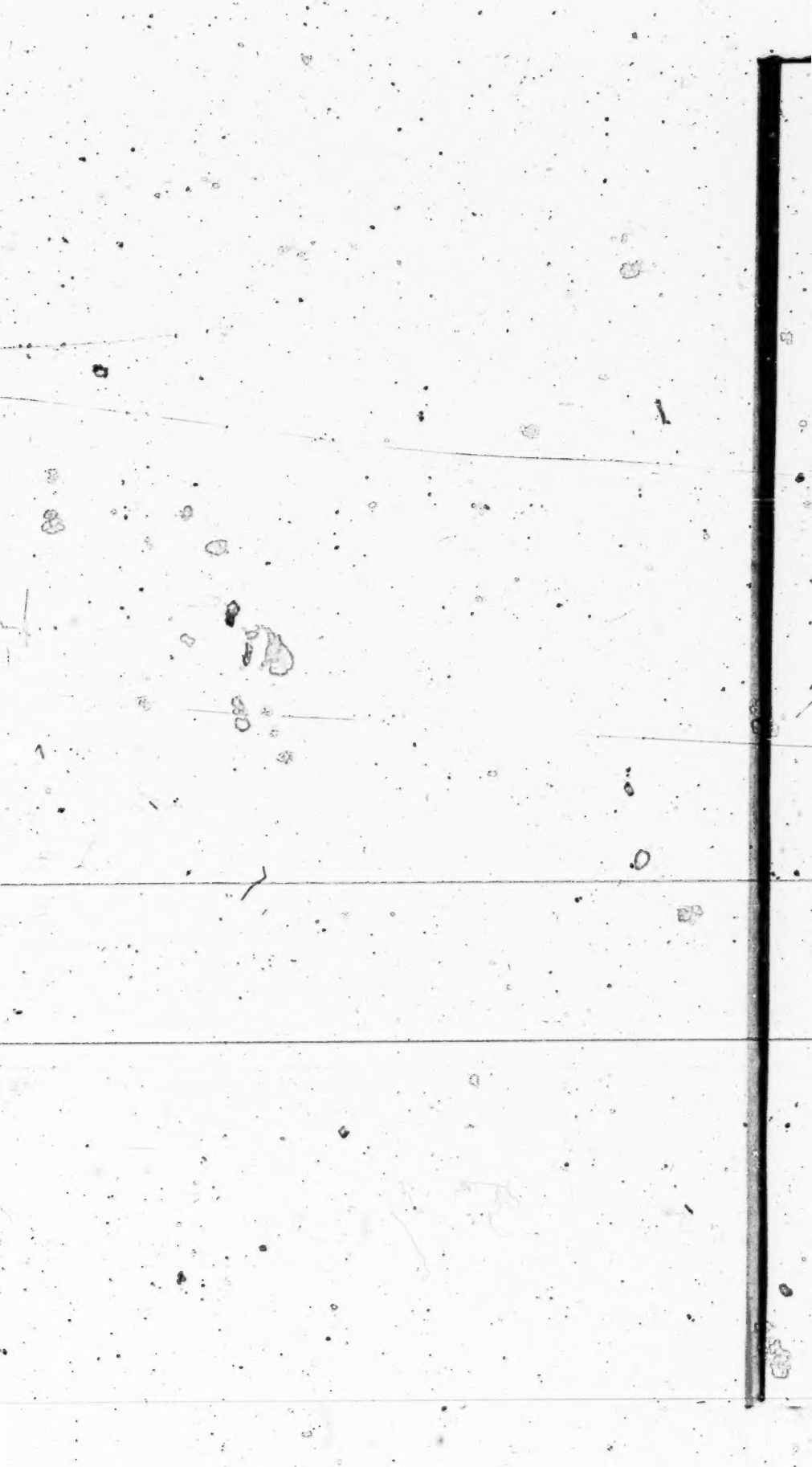
STATE OF MINNESOTA EX REL. CHARLES EDWIN PEARSON, APPELLANT,

vs.

PROBATE COURT OF RAMSEY COUNTY, MINNESOTA, AND HON. MICHAEL F. KINKEAD, JUDGE OF SAID COURT OF RAMSEY COUNTY

APPEAL FROM THE SUPREME COURT OF THE STATE OF MINNESOTA

FILED SEPTEMBER 16, 1939



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INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 11, 1939.

—5051

[fol. 1] **IN SUPREME COURT OF MINNESOTA**

STATE OF MINNESOTA, ex rel., CHARLES EDWIN PEARSON, Relator,

vs.

PROBATE COURT OF RAMSEY COUNTY, MINNESOTA and HON. ALBIN S. PEARSON, Judge of said Probate Court of Ramsey County, Respondents

PETITION FOR WRIT OF PROHIBITION—Filed May 5, 1939

To the Honorable Supreme Court of the State of Minnesota:

The petition of Charles Edwin Pearson of the City of St. Paul, Ramsey County, Minnesota, respectfully alleges:

That on or about the 28th day of April, 1939, an order for hearing on May 5th, 1939, at 2 o'clock P. M., was made and issued by the Probate Court of Ramsey County, Minnesota, a copy of which is hereto attached, marked Exhibit "A", and hereby referred to and made a part hereof. That on said 28th day of April, 1939, a warrant and order for relator's arrest was made and issued by said Probate Court, a copy of which warrant is hereto attached marked Exhibit "B", and made a part hereof. That said order was made upon a petition, a copy of which is hereto attached marked Exhibit "C". That relator is about to be summoned and arrested and imprisoned under said order and warrant by the Sheriff of Ramsey County, Minnesota, forthwith, to appear before said Probate Court pursuant to said warrant and order.

That said warrant and order for hearing were made by said Probate Court under the provisions of a purported statute, Chapter 369, H. F. 1584, Session Laws of the State of Minnesota, 1939, entitled, "An act relating to persons having a psychopathic personality."

[fol. 2] That petitioner is informed and believes and so alleges that said purported statute is unconstitutional and void in that it violates Article VI, Section 7 and Article I, Sections 2, 4, 5, 7, 11 and 27 of the Constitution of the State of Minnesota, and the 13th and 14th Amendments of the Constitution of the United States.

That said Probate Court and said Judge thereof, as petitioner is informed and believes, intends to and will proceed

to conduct a hearing and examine relator pursuant to the provisions of said purported statute, and make findings and render order and judgment therein, unless this Court, by its writ of prohibition, shall otherwise order.

That said statute, as relator is informed and believes, (a) purports to confer jurisdiction on the Probate Court contrary to said Article VI, Section 7, of the Minnesota Constitution; and (b) denies relator, a citizen, the rights and privileges secured to him by the law of the land, and imposes involuntary servitude otherwise than punishment of a crime (Article 1, Section 2); (c) denies the right of trial by jury (Article I, Section 4); denies a public trial by an impartial jury; (d) fails to inform of the nature or cause of the accusation (Article I, Section 6); (e) said act makes no provision for bail, and inflicts cruel and unusual punishment (Article I, Section 5); (f) denies due process of law and violates the constitutional provision that no person shall be held to answer for a criminal offense without due process of law; (g) violates the provision that no person shall be put twice in jeopardy of punishment, nor be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law; (h) denies right of persons before conviction to be bailable by sufficient sureties (Article I, Section 7); (i) is an ex post facto law (Article I, Sec. 11); (j) violates [fol. 3] the constitutional provision that no law shall embrace more than one subject which shall be expressed in its title (Article VI, Section 27); (k) violates the provisions against involuntary servitude except as a punishment for crime whereof a party shall have been duly convicted (U. S. Constitution, 13th Amendment); (l) abridges the privileges or immunities of relator, a citizen of the United States, and deprives him of liberty without due process of law and denies to him the equal protection of the laws. (U. S. Constitution, 14th Amendment.)

That this petitioner has no speedy or adequate remedy by appeal or otherwise: That there is no bail provided for under said purported statute. Unless relator have relief herein he will be subjected to expense, to publicity and ignominy and jeopardy of trial. That under said threatened proceedings he will be denied the constitutional privilege against self incrimination. That he will be caused to suffer irreparable injury and immeasurable damage. That re-

lator, a sane man, should not be compelled to submit to proceedings, void ab initio, which may terminate in causing him to be confined in a hospital for the insane. State ex rel. Robert v. Hense, 135 Minn. 99, 160 N. W. 198.

Wherefore your petitioner prays that this court issue its writ of prohibition commanding said Probate Court, and the Judge thereof, to desist from any further proceedings in said action.

Further, that relator have such other and further relief herein as may be proper.

Charles Edwin Pearson, Petitioner. Otis H. Godfrey, Attorney for Petitioner.

[fol. 4] *Duly sworn to by Charles Edwin Pearson. Jurat omitted in printing.*

[fol. 5] EXHIBIT "A" TO PETITION

IN PROBATE COURT

61202

STATE OF MINNESOTA, COUNTY OF RAMSEY

Re: CHARLES EDWIN PEARSON, Psychopathic Personality

ORDER FOR HEARING

A petition for commitment of the above named patient having been filed,

It is Ordered, that such petition be heard before this court in the Court House, at St. Paul, Minnesota, on May 5th, 1939, at 2 o'clock P. M.

Witness, the Hon. Albin S. Pearson, Probate Judge, this 28th day of April, 1939.

F. W. Gosewisch, Clerk. (Court Seal.)

(Service admitted April 28th, 1939. M. F. Kinkead, County Attorney, by Horace Hansen, Asst. County Atty.)

(Filed Apr. 28, 1939. F. W. Gosewisch, Clerk, by G. E. A., Deputy.)

[fol. 5a] EXHIBIT "B" TO PETITION

Order to Sheriff. BC. 2A. Form 462C. 4-27 1M.

IN PROBATE COURT

STATE OF MINNESOTA,
County of Ramsey, ss:

The State of Minnesota to the Sheriff of Said County:

Petition in due form of law having been filed in my office alleging that Charles Edwin Pearson, residing at No. 746 E. Geranium Street, St. Paul, in said County is—psychopathic personality—and in need of care and treatment, you are therefore required forthwith to bring said above named person before the above named Court for examination as to his psychopathic personality according to the statute in such case made and provided.

Witness my hand and official seal this 28th day of April, 1939.

Albin S. Pearson, Judge of Probate. (Seal of Probate Court.)

[fol. 6] EXHIBIT "C" TO PETITION

PROBATE COURT

STATE OF MINNESOTA,
County of Ramsey:

Re: Charles Edwin Pearson, Psychopathic Personality

Petition for Commitment

James A. Cook, a police officer of the City of St. Paul, Minnesota, respectfully represents that Charles Edwin Pearson is a resident and has legal settlement in the City of St. Paul, County of Ramsey and State of Minnesota, residing at 746 E. Geranium Street. That the said Charles Edwin Pearson is married.

That your petitioner believes that said patient is a psychopathic personality as defined by Chapter 369 of the Session Laws of Minnesota, 1939, because of his emotional instability, impulsiveness of behaviour, lack of customary stand-

ards of good judgment, failure to appreciate the consequences of his acts as to render said Charles Edwin Pearson irresponsible for his conduct with respect to his sexual behaviour with several young girls under the age of sixteen years. That the said sexual behaviour of the said Charles Edwin Pearson with young girls is such as to render him dangerous to other persons.

Wherefore, your petitioner prays that said Charles Edwin Pearson be committed according to law.

James A. Cook.

STATE OF MINNESOTA,
County of Ramsey, ss:

James A. Cook, being duly sworn says that he is the petitioner in the above entitled proceedings; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

James A. Cook.

Subscribed and sworn to before me this 27th day of April, 1939. George E. Anderson, Clerk of Probate Court.

[fol. 7] IN PROBATE COURT

STATE OF MINNESOTA,
County of Ramsey:

Re: Charles Edwin Pearson, Psychopathic Personality

Approval of Petition

M. F. Kinkead respectfully represents to the Court that the facts upon which the attached petition are based have been submitted to the office of the County Attorney and the County Attorney is satisfied that good cause exists for the institution of this proceeding.

M. F. Kinkead, County Attorney of Ramsey County.

April 27, 1939.

[fol. 8] IN SUPREME COURT OF MINNESOTA

[Title omitted]

ORDER ALLOWING WRIT OF PROHIBITION—Filed May 5, 1939

Upon reading and filing the foregoing verified petition of Charles Edwin Pearson and on motion of Otis H. Godfrey, attorney for the petitioner, let an alternative writ of prohibition issue out of and under seal of this court, as prayed for, returnable on May 15, 1939, at 9:30 o'clock A. M., and let a copy of said petition be served with such writ.

Dated May 5th, 1939.

Henry M. Gallagher, Chief Justice of Supreme Court.

[fol. 8½] [File endorsement omitted.]

IN SUPREME COURT OF MINNESOTA

[fols. 9-10] 32163

[Title omitted]

ALTERNATIVE WRIT OF PROHIBITION—Filed May 8, 1939

The State of Minnesota to the Probate Court of Ramsey County, Minnesota, and to Hon. Albin S. Pearson, Judge Thereof.

Greetings: Whereas it has been made to appear to our Supreme Court by the verified petition of Charles Edwin Pearson:

(Here follows petition which is omitted in printing as it appears at page 1 of record)

[fol. 11] Nevertheless you the said Probate Court of Ramsey County, Minnesota, and Honorable Albin S. Pearson, Judge thereof, as it is alleged, have proceeded in said action and have caused a warrant to be issued for the arrest of said Charles Edwin Pearson and are about to conduct a hearing and examine him and make findings and render order and judgment therein under Chapter 369, H. F. No. 1584, Session Laws of Minnesota, 1939, entitled, "An Act relating to persons having a psychopathic personality," against the

laws and customs of our state and to the manifest injury and damage to said Charles Edwin Pearson.

We, therefore, being willing that the laws and customs of our said state should be observed, and that our good and faithful citizens should in no wise be oppressed, do com- [fol. 12] mand you, the said court and judge thereof, that you desist and refrain from any further proceedings in the said action and proceeding specified in said relation and herein, until the further order of this court thereon; and that on the 15 day of May, 1939, at 9:30 o'clock A. M., you show cause before our said court why you should not be absolutely restrained from any further proceedings in said action. And have you then and there this writ.

Witness, the Hon. Henry M. Gallagher, Chief Justice of the Supreme Court of the State of Minnesota, this 5th day of May, 1939.

Grace Kaercher Davis, Clerk of Supreme Court. (Seal.)

[fol. 13] Exhibit "A" to writ omitted. Printed side page. 5 ante.

[fol. 13½] Exhibit "B" to writ omitted. Printed side page. 5a ante.

[fols. 14-15] Exhibit "C" to writ omitted. Printed side page. 6 ante.

[fol. 16] STATE OF MINNESOTA,
County of Ramsey, ss:

Otis H. Godfrey being first sworn deposes and says that at the City of St. Paul, County of Ramsey, State of Minnesota, on the 5th day of May, 1939, he served the within Alternative Writ of Prohibition upon Albin S. Pearson, Judge of Probate Court of Ramsey County, Minnesota, and upon the Probate Court of Ramsey County, Minnesota, personally, by handing to and leaving with said Albin S. Pearson, Probate Judge, a true and correct copy, for said Judge, and a true and correct copy, for said Probate Court.

Otis H. Godfrey.

Subscribed and sworn to before me this 5th day of May, 1939. Francis X. Buchmeier, Notary Public, Ramsey County, Minnesota. (Seal.)

My commission expires Nov. 20, 1945.

[fol. 16½] [File endorsement omitted.]

IN SUPREME COURT OF MINNESOTA

[fol. 17] 32163

[Title omitted]

RETURN TO WRIT—Filed May 17, 1939

To the Supreme Court of Minnesota:

Pursuant to the Writ of Prohibition herein, I, Albin S. Pearson, Probate Judge of Ramsey County, Minnesota, hereby certify that attached hereto is a true transcript of all documents on file herein, except the copies of the Petition for Writ of Prohibition, Order for issuance of said writ, and the Alternative Writ served upon me and filed herein on May 5, 1939; and that the amount of $1.50 clerk's fee for this return was paid on May 12, 1939.

Albin S. Pearson, Probate Judge.

Dated May 12, 1939. (Court Seal.)

[File endorsement omitted.]

[fol. 18] Approval of Petition omitted. Printed side page. 7 ante.

[fols. 19-20] Petition for Commitment omitted. Printed side page. 6 ante.

[fol. 21] Order for Hearing omitted. Printed side page. 5 ante.

[fol. 22] Warrant omitted. Printed side page. 5-a ante.

[fol. 23] IN SUPREME COURT OF MINNESOTA

[Title omitted]

RETURN TO WRIT—Filed May 17, 1939

I, Albin S. Pearson, Judge of the Probate Court in and for Ramsey County, State of Minnesota, the respondent above named, do hereby respectfully make this answer and return to the petition of Charles Edwin Pearson, relator,

praying for a writ of prohibition to issue out of this court in the above entitled cause, as follows:

I

That Exhibits "A" and "B" attached to the aforesaid relator's petition and alternative writ of prohibition appear to be true and correct copies of the order for hearing and order to the sheriff of Ramsey County, Minnesota.

II

That Exhibit "C" and Exhibit "C", page 2, attached to said petition and alternative writ of prohibition appear to be true and correct copies of the petition for commitment and approval of said petition by the county attorney of Ramsey County, Minnesota.

[fol. 24]

III

Respondent further respectfully shows to the court as follows:

a) That on the 27th day of April, 1939, one James A. Cook, a police officer of the City of St. Paul, swore to an affidavit, of which relator's exhibit is a copy, before George E. Anderson, Deputy Clerk of Probate Court, City of St. Paul, Ramsey County, Minnesota, in which affidavit affiant deposed and stated that the relator Charles Edwin Pearson was a resident and had a legal settlement in the city of St. Paul, County of Ramsey, Minnesota, and that said Pearson had a psychopathic personality as defined by Chapter 369 of the Session Laws of 1939, and that his behavior with young girls rendered him dangerous to other persons.

b) That relator's Exhibit "C", page 2, was the approval of said petition by M. F. Kinkead, the County Attorney at Ramsey County, Minnesota, in which he represented to the court that the facts upon which the attached petition was based had been submitted to his office and he was satisfied good cause existed for the institution of proceedings to declare relator a psychopathic personality; that said petition and approval of the County Attorney were filed with the clerk of probate court of Ramsey County, Minnesota, on April 28, 1939.

c) That your respondent as Judge of Probate Court of Ramsey County, Minnesota, pursuant to the filing of said petition and approval issued an order to the sheriff of Ram-

sey County, of which Exhibit "B" is a correct copy, requiring him to bring the relator before the court for examina-[fol. 25] tion as to his psychopathic personality in accordance with the statute in such case made and provided, and made an order of which Exhibit "A" is copy requiring said pefition to be heard on May 5, 1939, at 2:00 o'clock P. M. for the purpose of determining whether said relator had a psychopathic personality and was in need of care and treatment.

IV

Respondent further respectfully shows to the court as follows: Upon the foregoing facts I concluded that it was within my power and jurisdiction as Judge of said Probate Court to hear and determine the question of fact and law involved in said proceeding to determine whether said relator was a person having a psychopathic personality as provided in Chapter 369, Laws of 1939, and that in conscience and law it was my duty to decide that the service of process upon the relator was valid and that the said Probate Court obtain jurisdiction over the person of relator in said proceedings.

Respectfully submitted, Albin S. Pearson, Judge Probate Court. (Court Seal.)

Duly sworn to by Albin S. Pearson. Jurat omitted in printing.

[fol. 26] State of Minnesota,
County of Ramsey; ss:

The foregoing Return is hereby adopted by Albin S. Pearson, Judge of the Probate Court of the County of Ramsey, Minnesota, respondent named in the Order to Show Cause and Alternative Writ of Prohibition, and will be relied upon as sufficient cause why said Writ should not be made absolute and that the restraining order be discharged and respondent proceed with the hearing of said cause.

J. A. A. Burnquist, Attorney General, By John A. Weeks, Assistant Attorney General, Attorneys for Respondents, 102 State Capitol, St. Paul, Minnesota.

[File endorsement omitted.]

Service of the within return is hereby admitted at St. Paul, Minn. this 17th day of May, 1939.

Otis H. Godfrey, Attorney for Relator.

[fol. 27] IN SUPREME COURT OF MINNESOTA

[Title omitted]

PETITION FOR APPEAL—Filed Sept. 6, 1939

Considering himself aggrieved by the final decision and judgment of the Supreme Court of the State of Minnesota in the above entitled cause, the relator Charles Edwin Pearson, appellant herein, hereby prays for the allowance of an appeal to the Supreme Court of the United States from the final judgment herein, and for an order fixing the amount of the bond thereon.

The opinion of the Supreme Court of Minnesota herein was filed June 30, 1939; the order denying appellant's petition for re-argument was filed August 31st, 1939, and final judgment was entered August 31st, 1939.

Appellant represents and states that in the above entitled cause he raised and presented the issue that Chapter 369, Session Laws of Minnesota for 1939, was invalid and void upon the ground that it was repugnant to all of the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States. That the validity of said statute of the State of Minnesota was thereby drawn in question.

[fol. 28] That in and by its decision and final judgment herein as above set forth the Supreme Court of Minnesota necessarily decided in favor of the validity of said Chapter 369, Laws of 1939, and denied the claim of appellant that said statute was repugnant to the Constitution of the United States.

That on the facts as above stated, appellant, under the terms and provisions of Section 237 of the U. S. Judicial Code as amended, (U. S. C. A. Title 28, Section 344) is given a direct right of appeal to the Supreme Court of the United States.

Wherefore, appellant and relator prays for an order granting his appeal to the Supreme Court of the United

States and fixing the terms and provisions of the bond to be furnished by him on such appeal.

Dated September 6th, 1939.

Charles Edwin Pearson, by Joseph F. Cowern, His Attorney.

[File endorsement omitted.]

[fol. 29] IN SUPREME COURT OF MINNESOTA

[Title omitted]

ORDER ALLOWING APPEAL—Filed Sept. 6, 1939

The petition of Charles Edwin Pearson for the allowance of an appeal to the Supreme Court of the United States from the final judgment entered in the above entitled cause on August 31st, 1939, came on to be heard, accompanied by the assignment of errors, prayer for reversal, and the typewritten jurisdictional statement required by Rule 12 of the Rules of the Supreme Court of the United States, all in due form, and it appearing that the petitioner, Charles Edwin Pearson, has, in the above proceeding, attacked Chapter 369, Laws of 1939, as invalid because repugnant to the Constitution of the United States, and particularly Section 1 of the Fourteenth Amendment thereof, and that by its decision and judgment herein this court necessarily decided that said Chapter 369 did not violate any rights guaranteed to petitioner by the Constitution of the United States, and it appearing that under such circumstances and pursuant to Section 237 of the Judicial Code, as amended, (U. S. C. A. Title 28, section 344) the petitioner has a right of appeal to the Supreme Court of the United States, and the court, upon hearing Joseph F. Cowern, attorney for petitioner in support of said petition, and having duly considered said matter;

[fol. 30] It is hereby ordered that an appeal to the Supreme Court of the United States by said Charles Edwin Pearson, petitioner, is hereby allowed, upon the filing of a bond in the form presented to this court in the sum of $500.00 conditioned that petitioner will answer all costs that may be adjudged to the Probate Court of Ramsey

County, Minnesota, and Hon. Albin S. Pearson, judge of said Probate Court.

And the Clerk of this court is hereby ordered to transmit under her hand and the seal of this court to the Supreme Court of the United States a copy of this order and of all proceedings had and documents necessary for a complete transcript so that the same shall be received by the clerk of the Supreme Court of the United States within thirty days from the date of this order.

Dated September 6th, 1939.

Henry M. Gallagher, Chief Justice of the Supreme Court of Minnesota.

[File endorsement omitted.]

[fol. 31] [File endorsement omitted]

IN SUPREME COURT OF MINNESOTA

[Title omitted]

ASSIGNMENT OF ERRORS—Filed September 6, 1939

Charles Edwin Pearson, the above named relator and appellant, assigns the following errors in the record and proceedings in the above cause:

(1) The Supreme Court of Minnesota erred in holding that Chapter 369, Laws of 1939, was not repugnant to the Constitution of the United States, and in holding and deciding that it was not too vague, indefinite and uncertain to constitute due process of law within the meaning of Section 1 of the Fourteenth Amendment to the Constitution of the United States, and erred in refusing to hold and decide that said Chapter 369 was too vague, indefinite and uncertain to constitute valid legislation under the due process clause of the Fourteenth Amendment to the Constitution of the United States.

(2) The Supreme Court of Minnesota erred in holding that said Chapter 369, Laws of 1939, did not deny appellant the equal protection of the laws guaranteed to him by Section 1 of the Fourteenth Amendment to the Constitution of the United States, and in refusing to hold and decide that

said Chapter 369 violated the Fourteenth Amendment to the Constitution of the United States in that it is not made applicable to all of the class treated of, but on the contrary exempts many of said class from its provisions.

[fol. 32] (3) The Supreme Court of Minnesota erred in holding that said Chapter 369, Laws of 1939, did not deny to appellant the due process of law that is guaranteed to him by Section 1 of the Fourteenth Amendment to the Constitution of the United States, and in refusing to hold and decide that said Chapter 369 contained no provisions, safeguarding and protecting human rights and securing to appellant and others rights and liberties guaranteed by Section 1 of the Fourteenth Amendment to the Constitution of the United States, and in refusing to hold and decide that said Chapter 369 was so arbitrary, unfair and wanting in reason as to violate established principles of private right and distributé justice that the Constitution of the United States, and particularly Section 1 of the Fourteenth Amendment thereof, was designed to secure to all.

(4) That said Chapter 369, Laws of 1939, is in its essence criminal legislation and is void because denying appellant a trial by jury in violation of the Constitution of Minnesota and of the due process of law clause of Section 1 of the Fourteenth Amendment, to the Constitution of the United States, and the Supreme Court of Minnesota erred in holding said Chapter 369 valid as against the objection that it unlawfully denies appellant a trial by jury.

(5) That said Chapter 369, Laws of 1939, is so arbitrary, unusual and cruel in its provisions, and so lacking in any provision for the protection of human rights and liberties as to offend the good sense of mankind and all the principles of right and justice and is void because repugnant to the due process of law guaranteed by Section 1 of the Fourteenth Amendment to the Constitution of the United States, and the Supreme Court of Minnesota erred in holding that it was not repugnant to the Fourteenth Amendment, and in refusing to hold that it was void because repugnant to the Fourteenth Amendment for the reasons here stated.

[fols. 33-53] (6) The Supreme Court of Minnesota erred in holding and deciding that Chapter 369, Laws of 1939, did not abridge the privileges and immunities of citizens or of

this appellant, as guaranteed by the Fourteenth Amendment of the Constitution of the United States.

PRAYER FOR REVERSAL

For which errors the appellant herein prays that the said final judgment and decision of the Supreme Court of the State of Minnesota, dated August 31st, 1939, in this cause, be reversed and judgment rendered in favor of said appellant, and for costs. Dated September 6th, 1939.

Charles Edwin Pearson, Appellant, by Joseph F. Cowern, His Attorney.

[fols. 54-56] Citation in usual form showing service on John A. Weeks filed Sept. 6, 1939 omitted in printing.

[fol. 57] [File endorsement omitted]

IN SUPREME COURT OF MINNESOTA

[Title omitted]

CERTIFICATE OF CHIEF JUSTICE—Filed September 6, 1939

It is hereby certified that both in his brief and in the oral argument in the above cause, as well as in his original petition, the appellant, Charles Edwin Pearson, urged that Chapter 369, Laws of 1939, was void because it was repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States, in that it denied appellant due process of law and the equal protection of the laws and abridged the privileges and immunities of citizens of the United States, and those questions were necessarily decided against appellant when the act was held valid.

This certificate is made, not for the purpose of attempting to confer jurisdiction on the Supreme Court of the United States, but for the purpose of making it clear that the above claims made by appellant in his original petition were not later waived or withdrawn by him, and because the opinion in the case deals almost entirely with state questions.

Dated September 6th, 1939.

Henry M. Gallagher, Chief Justice, Supreme Court of Minnesota.

ORDER

On motion of counsel for appellant, it is hereby ordered that the above certificate be and it is hereby made a part of the record of the above cause.

Henry M. Gallagher, Chief Justice, Supreme Court of Minnesota.

[fols. 58-60] Bond on appeal for $500.00 approved and filed Sept. 6, 1939 omitted in printing.

[fol. 61] [File endorsement omitted]

IN SUPREME COURT OF MINNESOTA, RAMSEY COUNTY

No. 53

Gallagher, C. J.

32163

STATE OF MINNESOTA ex rel., CHARLES EDWIN PEARSON, Relator,

vs.

PROBATE COURT OF RAMSEY COUNTY and HON. A. S. PEARSON, Judge, Respondents

SYLLABUS

1. Chapter 369, L. 1939, which subjects persons who are irresponsible for their conduct in sexual matters and thereby dangerous to others to the jurisdiction of the probate court is not violative of constitutional limitations on the jurisdiction of that court.

2. An act entitled "A Bill for an Act Relating to Persons Having a Psychopathic Personality," and providing for the care and commitment of sexually irresponsible persons dangerous to others does not violate Art. 4, § 27, of the state constitution which provides: "No law shall embrace more than one subject, which shall be expressed in its title."

3. Held, (a) The provisions of c. 369, L. 1939, are not so indefinite and uncertain as to render the statute void.

(b) While due process of law requires notice and opportunity to be heard, the constitutional right to a jury trial does not apply to proceedings for the care and commitment of sexually irresponsible persons dangerous to others.

Writ quashed.

[fol. 62] OPINION—Filed June 30, 1939

GALLAGHER, Chief Justice:

On April 27, 1939, James A. Cook, a police officer of the city of St. Paul, filed in the probate court of Ramsey county a petition verified on information and belief, charging one Charles Edwin Pearson with being a psychopathic personality as defined by c. 369, Session Laws of Minnesota, 1939, and praying for his commitment according to law. On certification by the county attorney of his satisfaction that good cause existed for the institution of the proceedings, the probate court issued an order requiring the sheriff of Ramsey county to forthwith bring the said Pearson before the court and another order fixing a hearing on the petition for May 5, 1939, at two o'clock P. M.

Before the service of these orders, relator applied to this court for a writ of prohibition and on his verified petition attacking the constitutionality of the act under which the proceedings were instituted we issued a temporary writ prohibiting the probate court from proceeding with the hearing until the further order of this court. The matter is now here on relator's application to make the writ permanent.

Because of a recognized need for legislation to deal with sex offenders and a belief, shared in by medical authorities and others, that sex crimes are committed because of a weakness of the will as well as of the intellect, the 1939 legislature enacted c. 369 entitled: "A Bill for an Act Relating to Persons Having a Psychopathic Personality." Section 1 of the act reads:

"The term 'psychopathic personality' as used in this act means the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of

customary standards of good judgment, or failure to appreciate the consequences of his acts, or a combination of any such conditions, as to render such person irresponsible for his conduct with respect to sexual matters and thereby dangerous to other persons."

[fol. 63] Section 2, in part, reads:

"Except as otherwise herein or hereafter provided, all laws now in force or hereafter enacted relating to insane persons, to persons alleged to be insane, and to persons found to be insane, shall apply with like force and effect to persons having a psychopathic personality, to persons alleged to have such personality, and to persons found to have such personality, respectively."

The act also provides that the facts be submitted to the county attorney and his approval be procured before a petition be filed with the probate court; that the probate judge may at his discretion exclude the public from the hearing; that the patient may be represented by counsel and if the court determines that the patient is financially unable to obtain counsel, it is empowered but is not required to appoint counsel for him; and that the patient shall be entitled to have subpoenas issued to compel the attendance of witnesses. From a finding that a "patient" is a "psychopathic personality", he may appeal to the district court upon compliance with the provisions of 3 Mason Minn. St. 1938 Supp. §§ 8992-166, 8992-167, 8992-169 and 8992-170.

Section 3 of the act reads:

"The existence in any person of a condition of psychopathic personality shall not in any case constitute a defense to a charge of crime, nor relieve such person from liability to be tried upon a criminal charge, unless such person is in a condition of insanity, idiocy, imbecility, or lunacy within the meaning of the laws relating to crimes and criminal procedure."

Relator challenges the constitutionality of c. 369, L. 1939, on three grounds. He contends: (1) That it violates Article 6, § 7, of the constitution of Minnesota defining and limiting the jurisdiction of probate courts; (2) that it violates Article 4, § 27, of the constitution of Minnesota, which reads: "No

law shall embrace more than one subject, which shall be expressed in its title" and (3) that it is void because it is uncertain and indefinite and violates the Fourteenth Amendment to the Constitution of the United States and other constitutional provisions.

[fol. 64] 1. We deal first with the question of the power of the legislature under our constitution to confer upon the probate court jurisdiction over persons having what is termed a "psychopathic personality."

Article 6, § 1 of the Minnesota constitution reads: "The judicial power of the state shall be vested in a supreme court, district courts, courts of probate, justices of the peace, and such other courts, inferior to the supreme court, as the legislature may from time to time establish by a two-thirds vote."

Section 7 of the same Article, in part, reads: "A probate court shall have jurisdiction over the estates of deceased persons and persons under guardianship, but no other jurisdiction, except as prescribed by this Constitution."

It will be noted that the constitution specifically limits the jurisdiction of the probate court to "estates of deceased persons and persons under guardianship." If persons having "psychopathic personalities" are to be included among those over whom the probate court has jurisdiction, it must be because they are persons subject to guardianship. The constitution does not specifically state what class of persons are subject to guardianship but leaves the regulation of that question to the legislature. It was so decided in State v. Wilcox, 24 Minn. 143, 148 where the court said: "The manner in which jurisdiction conferred by the constitution on any court or officer shall be exercised when not prescribed by the constitution itself, or the power to regulate it vested elsewhere, may be regulated by the legislature." It was there held that the putting under guardianship of all persons who are proper subjects for it—insane persons, incorrigible drunkards, idiots, spendthrifts, as well as minors—comes within the jurisdiction of the probate court.

While this court in State v. Wilcox, supra, referred only to insane persons, incorrigible drunkards, idiots, spendthrifts and minors as included in the class subject to guardianship within the jurisdiction of the probate court we [fol. 65] do not think it was intended for all time to limit the classification to those named or to deprive the probate

court of jurisdiction over other types of "unnaturals" such as the class involved herein.

Leavitt v. City of Morris, 105 Minn. 170, 117 N. W. 393, held constitutional c. 288, L. 1907, creating and establishing a hospital farm for inebriates, and authorizing the state board of control to purchase lands therefor and to provide means for the building and maintenance of such institution. This case recognized the jurisdiction of the probate court over persons defined by the act as "inebriates" and approved the procedure prescribed for hearing and commitment.

The constitutionality of c. 397, L. 1917, known as "The Juvenile Court Act" was determined in Peterson v. McAuliffe, 151 Minn. 467, 187 N. W. 226. That act placed jurisdiction over juvenile offenders in the district court in counties having more than 33,000 inhabitants and in the probate court in counties having not more than 33,000 inhabitants.

Chapter 369, L. 1939, §1, defines the term "psychopathic personality" to mean "the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of his acts, or a combination of any such conditions, as to render such person irresponsible for his conduct with respect to sexual matters and thereby dangerous to other persons." The American Illustrated Medical Dictionary, Fifteenth Edition, by Dorland, defines "psychopathic" as "pertaining to mental disease." It naturally follows that a "psychopathic personality" is one characterized by a mental disorder. It is well recognized that there are many types and degrees of mental disorders. An article appearing in volume 2, March-April, 1939, Number 3 Edition of "The American Journal of Medical Jurisprudence" on "Mental Abnormality in Relation to Crime," pp. 161, 163 refers to "psychopathic personalities" thus:

[fol. 66] "These are individuals who show a lifelong and constitutional tendency not to conform to the customs of the group. They habitually misbehave. They have no sense of responsibility to their fellow-men or to society as a whole. Due to their inherent inability to follow any one occupation, they succumb readily to the temptation of getting easy money through a life of crime. There is usually

a history of delinquency in early life. These individuals fail to learn by experience. They are inadequate, incompatible, and inefficient. This class is sometimes designated as 'Constitutional Psychopathic Inferiority.' Before making this diagnosis, every other diagnostic possibility must be considered and excluded. In this group we see pathological lying, prostitution, vagrancy, illegitimacy, alcoholism and drug addiction. The term 'moral deficiency' is sometimes used to characterize this group. These patients may have psychotic episodes superimposed upon the trends just mentioned. Many of these individuals come into contact with the courts on account of threats, assaults, quarrels and vagrancy."

It is to be noted that the definition given above includes not only the sexually irresponsible but also others of immoral tendencies. The fact that the legislature has chosen to limit the class to the former does not make the act more or less objectionable from a jurisdictional standpoint. Whether the limitation constitutes a basis for objection on the ground that the title fails to express the subject of the act will be later considered.

While the abnormalities of the group placed under the jurisdiction of the probate court by this act differ in form from those which characterize inebriates, idiots and insane persons, the need for observation and supervision is the same and the considerations which led this court in State v. Wilcox, supra, to recognize the latter as being proper subjects for guardianship apply with equal force to the former. In the interest of humanity and for the protection of the public, persons so afflicted should be given treatment and confined for that purpose rather than for the purpose of punishment. This we believe to be true even though their mental deficiencies might not be such as to require absolving them from the effects of the criminal statutes. We find no difficulty in holding that the legislature may give to the probate court jurisdiction over such personalities.

[fol. 67] 2. It is urged by relator that c. 369, L. 1939, is void because in violation of Article 4, §27, of the constitution of Minnesota, which reads: "No law shall embrace more than one subject, which shall be expressed in its title." Cases of two kinds arise under this and similar constitutional provisions: (1) Those in which it is claimed that the

title is so general in its terms that it does not fairly express the subject of the act, and (2) those in which it is claimed that the subject as expressed in the title excludes, by implication, certain provisions of the act. The instant case is of the first type.

The objects of the constitutional provision have been often expressed in the decisions of this court. They are, first, to prevent "log-rolling legislation", or "omnibus bills", by which a large number of different and disconnected subjects are united in bill and then carried through by a combination of interests; and, secondly, to prevent surprise and fraud upon the people and the legislature by including provisions in a bill whose title gives no intimation of the proposed legislation, or of the interest affected. 6 Dunnell, Minn. Dig. (2 ed. & 1932 Supp.), §8906 and cases cited.

While the provision of the constitution is mandatory, it is to be given a liberal and not a strict construction. Johnson v. Harrison, 47 Minn. 575, 50 N. W. 923. The rules to be applied to its construction and the tests to determine whether the law is repugnant to it are expressed by Mr. Justice Mitchell in Johnson v. Harrison, supra, in language so clear that it warrants adoption. "The term 'subject', as used in the constitution, is to be given a broad and extended meaning, so as to allow the legislature full scope to include in one act all matters having a logical or natural connection. * * * All that is necessary is that the act should embrace some one general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to [fol. 68] each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject. The large number of related or cognate matters often treated of under some comprehensive title, such as 'Criminal Code', 'Penal Code', 'Code of Civil Procedure', 'Private Corporations', 'Railroad Corporations', and the like, are familiar illustrations of what may be legitimately included in one act. * * * The subject may be as comprehensive as the legislature chooses to make it, provided it constitutes, in the constitutional sense, a single subject and not several. The connection or relationship of several matters, such as will render them germane to one subject and to each other, can be of various kinds, as, for example, of means to ends, of different subdivisions

of the same subject, or that all are designed for the same purpose, or that both are designated by the same term. Neither is it necessary that the connection or relationship should be logical; it is enough that the matters are connected with and related to a single subject in popular signification. The generality of the title of an act is no objection, provided only it is sufficient to give notice of the general subject of the proposed legislation and of the interests likely to be affected. The title was never intended to be an index of the law."

These rules and tests have been applied in a great many later cases. City of Crookston v. Polk County, 79 Minn. 283, 82 N. W. 586; Lien v. Norman County, 80 Minn. 58, 82 N. W. 1094; State Skyllingstad v. Gunn, 92 Minn. 436, 100 N. W. 97; Atwell v. Parker, 93 Minn. 462, 101 N. W. 946; Johnson v. Schmahl, 119 Minn. 179, 137 N. W. 741; State v. Sharp, 121 Minn. 381, 141 N. W. 526; Gard v. Otter Tail County, 124 Minn. 136, 144 N. W. 748; State v. Droppo, 126 Minn. 68, 147 N. W. 829; State ex rel City of Hastings v. Dakota County, 142 Minn. 223, 171 N. W. 801; Naeseth v. Village of Hibbing, 185 Minn. 526, 242 N. W. 6; Blaisdell v. Home Building & Loan Assn., 189 Minn. 422, 249 N. W. 334.

A title broader than the statute, if it is fairly indicative of what is included in it, does not offend the constitution. [fol. 69] State ex rel Young v. Standard Oil Co., 111 Minn. 85, 126 N. W. 527; Seamer v. G. N. Ry. Co. 142 Minn. 376, 172 N. W. 765. Whether or not a title is expressive of the subject matter of an act must be determined with reference to practical considerations, the purpose of the constitutional provision, the approach adopted by this court to the problem in the past, and the disposition of other cases involving titles of similar brevity.

Applying these principles to the statute before us it can be said: (1) If the term "psychopathic personality" gives sufficient notice that the act relates to sexually irresponsible persons, the class embraced by the terms of the statute is adequately named in the title, and (2) if the act affects such persons in a manner and by a mode reasonably to be associated with laws of this type, the fact that the title fails to mention such provisions does not render it too general from a constitutional viewpoint.

It is true that the term "psychopathic" is not a part of the working vocabulary of most people. Yet the reasonably

well-informed recognize it as having reference to mental disorders. (See The American Illustrated Medical Dictionary, Fifteenth Edition, by Dorland, supra). To those concerned with mental cases, it connotes a condition of the mind causing the person afflicted to be hopelessly immoral. In either case, the fact that the law deals with the sexually irresponsible would not come as a surprise to legislators or members of the public who might have occasion to read its title.

Since the title indicates that the act deals with persons of abnormal minds, the manner in and the mode by which the law is to operate are clearly germane to the subject expressed. That the statute is essentially the same in these respects as are the laws of this state which apply to insane, idiots and inebriates appears sufficiently to indicate this fact.

[fol. 70] Examination of titles held not to be violative of the constitutional provision fortifies the conclusion which we have reached. In Johnson v. Harrison, supra, the title in question was "An Act to Establish a Probate Code." The body of the entitled act includes provisions which cast the descent and determine in whom property left by an intestate shall vest and which allow this title to be asserted by the heir in courts other than probate wholly independent of any action of or administration in the latter, as well as provisions fixing the jurisdiction of and procedure in the probate court.

In State v. McDow, 183 Minn. 115, 235 N. W. 637, it was held that "An ordinance relating to disorderly houses, and houses of ill-fame and common prostitutes" is not repugnant to the charter provision which requires that the title to an ordinance shall not contain more than one subject. And in Kerst v. Nelson, 171 Minn. 191, 197, 213 N. W. 904, an act entitled "An act in relation to the organization of the state government" was considered to be sufficiently specific. See also Leavitt v. City of Morris, 105 Minn. 170, 117 N. W. 393; State v. Helmer, 169 Minn. 221, 211 N. W. 3; State v. People's Ice Company, 124 Minn. 307, 144 N. W. 962; State v. Women's and Children's Hospital Association, 150 Minn. 247, 184 N. W. 1022.

Turning to recent decisions from other states having similar constitutional provisions we find that the following titles have been considered not too general in a constitutional sense: "An act relating to marriage and divorce"

(Titus v. Titus, 96 Color. 191, 193, 41 P. 2nd 244); "An act relating to corporations" (759 Riverside Ave., Inc. et al. v. Marvin, 109 Fla. 473, 475, 147 So. 848); "An act relating to disputes concerning terms and conditions of employment." (Fenske Bros. v. Upholsterers Union, 358 Ill. 239, 193 N. E. 112, 97 A. L. R. 1318); "An act concerning husband and wife, and declaring an emergency" Clark v. Clark, 202 Ind. 104, 111, 172 N. E. 124; "An act relating to cities of the first class" (City of Wichita v. Sedgwick County, 110 Kan. 471, 204 Pac. 693); "An act relating to crimes and [fol. 71] punishments" (Allen v. Commonwealth, 272 Ky. 533, 114 S. W. 2nd 757; "An act concerning the welfare of children" (Richardson v. State Board of Control, 98 N. J. L. 690, 121 Atl. 457, affirmed in 99 N. J. L. 516, 123 Atl. 720); "An act relating to warehouse receipts" (Commonwealth v. Rink, 267 Pa. 408, 110 Atl. 153).

We conclude, therefore, that the constitutional mandate is not violated by the title here in question. Its defects may offend the principles of legislative draftsmanship but not those of constitutional law.

3. Is the act so indefinite and uncertain as to make it void? Conceding that it is imperfectly drawn, the statute is nevertheless valid if it contains a competent and official expression of the legislative will. State v. Partlow, 91 N. C. 550, 49 Am. R. 652. Judicial interpretation cannot operate until the law making department of the state has spoken intelligibly. On the other hand, out of deference to legislative authority, we must give effect to all its enactments, according to its intention, so far as we have constitutional right and power. Attorney General v. City of Eau Claire, 37 Wis. 400, 438. To this end, we must, when confronted with a statute which is susceptible of different interpretations, accept that one which is in conformity with the purpose of the act and in harmony with the provisions of the constitution. See State v. Standard Oil Co., 61 Neb. 28, 33, 84 N. W. 413, 413, 87 Am. St. Rep. 449; Grenada County Supervisors v. Brogden, 112 U. S. 261, 5 Sup. Ct. 125, 28 L. ed. 704.

Statutes must be so construed as to give effect to every section and part, and when any doubts arise as to the constitutionality thereof such doubts must be resolved in favor of the law. Hurst v. Town of Martinsburg, 80 Minn. 40, 82 N. W. 1099; Hunter v. City of Tracy, 104 Minn. 378, 116 N. W. 922. Again, it has been said: "It is the bounden duty of courts to endeavor by every rule of construction to ascer-

tain the meaning of, and to give full force and effect to, every enactment of the general assembly not obnoxious to constitutional prohibitions. But if, after exhausting every [fol. 72] rule of construction, no sensible meaning can be given to the statute, or if it is so incomplete that it cannot be carried into effect, it must be pronounced inoperative and void." Lewis, Sutherland, St. Const., (2 ed.) pp. 140, 141. See also 6 Dunnell, Minn. Dig. (2 ed. & Supps.) § 8995, and cases cited; Aigler, Legislation in Vague or General Terms, 21 Mich. L. Rev. 831; 44 Harv. L. Rev. 1139; 45 Harv. L. Rev. 160.

Applying these principles to the case before us, it can reasonably be said that the language of Section 1 of the act is intended to include those persons who, by a habitual course of misconduct in sexual matters, have evidenced an utter lack of power to control their sexual impulses and who, as a result, are likely to attack or otherwise inflict injury, loss, pain or other evil on the objects of their uncontrolled and uncontrollable desire. It would not be reasonable to apply the provisions of the statute to every person guilty of sexual misconduct nor even to persons having strong sexual propensities. Such a definition would not only make the act impracticable of enforcement and, perhaps, unconstitutional in its application, but would also be, an unwarranted departure from the accepted meaning of the words defined. See Draper, "Mental Abnormality in Relation to Crime" Am. Jour. of Med. Jur., Vol. 2, No. 3, p. 163.

Section 2 of the act incorporates by reference all laws now in force or hereafter enacted relating to insane persons, to persons alleged to be insane and to persons found to be insane. Such practice has been held proper. Hasset v. Welch, 303 U. S. 303, 314, 58 Sup. Ct. 559, 82 L. Ed. 858; Hagler v. Small, 307 Ill. 460; Land Co. v. Brown, 73 Wis. 294, 40 N. W. 482, 3 L. R. A. 432. It has not been made to appear that those charged with administration of the insane laws have experienced any insuperable difficulties in understanding the provisions thereof. Since this act, in effect, merely extends the concept of insanity to include sexually irresponsible persons who are dangerous to others, we see no reason why such reference should be considered meaningless.

[fol. 73] Section 3 of the act provides that the existence in any person of a condition of psychopathic personality

shall not constitute a defense to a charge of crime. On its surface, this section would appear to imply that persons with psychopathic personalities are sane. The confusion which is thus caused is obviated when we consider the limited scope of the term "insanity" when used to indicate a defense to crime. In this state, an uncontrollable and insane impulse to commit crime, in the mind of one who is conscious of the nature and quality of the act, is not allowed to relieve a person of criminal liability. State v. Scott, 41 Minn. 365, 43 N. W. 62; State v. Simenson, 195 Minn. 258, 262 N. W. 638. See 17 Minn. L. Rev. 630. The act before us, in providing for the care and commitment of persons having uncontrollable and insane impulses to commit sexual offenses, treats them as insane. While the public welfare requires that they be treated before they have opportunity to injure others, it does not necessarily follow that their malady must excuse them from criminal conduct occurring in the past.

The final argument of the relator is that the act denies a "patient" a jury trial and fails to secure certain other rights of defendants in criminal proceedings. Since the proceedings here in question are not of a criminal character, we will confine ourselves to consideration of relator's right to a jury trial. While persons cannot be adjudged insane and committed without notice and an opportunity to be heard (State ex rel. Blaisdell v. Billings, 55 Minn. 467, 57 N. W. 206, 794; State ex rel. Kelly v. Kilbourne, 68 Minn. 320, 71 N. W. 396. See 43 Am. St. Rep. 531) the majority of the courts hold, and we think properly, that the constitutional right to a jury trial does not apply to proceedings of this type. Re O'Connor, 29 Cal. App. 225, 155 Pac. 115; Gaston v. Babcock, 6 Wis. 490; County of Black Hawk v. Springer, 58 Iowa 417. Contra In re McLaughlin, 87 N. J. Eq. 138, 102 Atl. 439; Com. ex rel. Stewart v. Kirkbride, 2 [fol. 74] Brewst. (Pa.) 419; Shumway v. Shumway, 2 Vt. 339.

If relator has a right to a jury trial, it is because such was provided at common law when our constitution was adopted. While no one has contended that "psychopathic personalities" were confined and treated at common law, the claim has been made that the issue of idiocy was, in early times, decided by a jury. The other view is that if such ever was the case, the practice had been abandoned before our constitution was adopted. That we are committed to the latter belief appears quite unequivocally from the lan-

guage of this court in Vinstad v. State Board of Control, 160 Minn. 264, 211 N. W. 12. Referring to proceedings in district court upon an appeal from an order of the probate court denying the petition of one adjudged feeble minded for restoration to capacity, the court there said that the constitutional right of trial by jury does not apply to proceedings for placing persons under guardianship. The question of guardianship was held not triable by jury as a matter of right, either in probate or district courts. It was added, however, that the district court could, in its discretion, send an issue of fact to the jury for a special verdict.

We conclude that the act is constitutional both in form and in application.

The restraining order is vacated and the writ quashed.

Gallagher, C. J.

Mr. Justice Hilton, being incapacitated by illness, took no part.

[fol. 75] IN SUPREME COURT OF MINNESOTA

32163

STATE OF MINNESOTA ex rel. CHARLES EDWIN PEARSON, Relator,

vs.

PROBATE COURT OF RAMSEY COUNTY, MINNESOTA, and HON. ALBIN S. PEARSON, Judge of said Probate Court of Ramsey County, Respondents

JUDGMENT

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the Writ of Prohibition issued out of this Court on May 5th, 1939, and directed to the Probate Court of Ramsey County, Minnesota, and the Hon. Albin S. Pearson, Judge of said Court of Ramsey County, be, and the same is quashed and the restraining order vacated.

And it is further determined and adjudged that respondents herein do have and recover of relator herein the sum and amount of

Fifty three and 60/100 Dollars, ($53.60) costs and disbursements in this cause in this Court, and that execution may be issued for the enforcement thereof.

Dated and signed August 31, 1939.

By the Court.

Attest: Grace Kaercher Davis, Clerk.

[fols. 76-80] Praecipe for transcript of record, filed Sept. 11, 1939, omitted in printing.

[fol. 81] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 82] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS RELIED UPON AND DESIGNATION OF NECESSARY PARTS OF RECORD—Filed Sept. 21, 1939

Pursuant to Rule 13, paragraph 9, of the Rules of the Supreme Court of the United States appellant states that he intends to rely upon all of the assignments of error filed by him to which reference is hereby made without repetition as said assignments are a part of the transcript and will be included in the printed record.

In support of said assignments of error appellant will claim, amongst other things, that Chapter 369, Laws of Minnesota for 1939, is void because repugnant to the guarantees contained in Section 1 of the Fourteenth Amendment to the Constitution of the United States in that:

(a) It is too vague, indefinite and uncertain to constitute valid legislation.

(b) It is void as class legislation because only applicable to a part of the class dealt with.

(c) There are no provisions in the act itself safeguarding and protecting human rights and securing to appellant and all others the rights and liberties guaranteed to them by the Fourteenth Amendment to the Constitution.

[fol 83] (d) The act is so arbitrary, unusual and cruel in its provisions and so lacking as to any provisions for the

protection of human rights and liberties as to offend the good sense of mankind and all the principles of right and justice.

(e) In its essence the act is criminal legislation and void because denying the right to a jury trial.

Appellant designates such parts of the record as necessary for a consideration of said points as is referred to in a stipulation of the parties relating thereto attached hereto and filed herewith.

Dated Sept. 16th, 1939.

Joseph F. Cowern, Attorney for Appellant.

Due service of the above Statement and Designation is admitted this 16 day of September, 1939.

John A. Weeks, Attorney for Appellees.

[fol. 84] In Supreme Court of the United States

Stipulation as to Printing of Record

It is stipulated and agreed by and between appellant and appellees, that, in order to save expense in the printing of the record herein, the following portions of the record, the same being considered sufficient to properly present all questions to be reviewed, shall be printed, and no more, to-wit:

(1) Petition for Writ of Prohibition with Exhibits and Order Allowing Writ. (Record pages 1 to 8.)

(2) The Alternative Writ of Prohibition. (That Portion of Writ Which Simply Copies the Petition and Its Exhibits Being Omitted and a Reference Made Indicating the Reason for such Omission.) (Record pages 9 to 16.)

(3) The Return and Additional Return (Record pages 17 to 26) Omitting, with Appropriate Reference, Exhibits Already Appearing in the Record.

(4) Petition for Allowance of Appeal. (Record pages 27, 28.)

[fol. 85] (5) Order Allowing Appeal. (Record pages 29, 30.)

(6) Assignment of Errors and Prayer for Reversal. (Record pages 31 to 33.)

(7) Citation with Proof of Service and Appearance. (Record pages 54, 55.)

(8) Certificate of Chief Justice and Order Making such Certificate Part of Record. (Record page 57.)

(9) Opinion of Court. (Record pages 61 to 74.)

(10) Final Judgment. (Record, page 75.)

(11) Chapter 369 Laws of 1939: (Record, page 44.)

(12) Clerk's Certificate to Record. (Record, page 81.)

(13) Statement of points to be relied upon (to be filed after docketing of case.)

The jurisdictional statement having been separately printed, may be omitted, and a reference only need be made in the printed record to the bond and approval thereof, the praecipe to clerk below, notice to appellees of paragraph 3 of Rule 12 and admission of service thereof, and the separate admission of service of the various papers shown at Record, page 60, it being thought that such documents throw no light on the questions involved. Pursuant to Rule 13 paragraph 9, titles, when repeated, and obviously unimportant matter shall be omitted.

As to the printing of Chapter 369, Laws of 1939, and the opinion of the Supreme Court of Minnesota (numbers 9 and 11 above), they are attached to the jurisdictional statement which we understand is separately printed, and, if the rules and custom of the United States Supreme Court permit, they might be omitted from the printed record in order to avoid the expense of printing them twice. [fol. 86] It is further stipulated and agreed that, if from oversight or omission, any necessary part of the record be not printed the portions omitted may be printed later.

Dated September 14th, 1939.

Joseph F. Cowern, Counsel for Appellant. John A. Weeks, Counsel for Appellees.

[fol. 87] [File endorsement omitted]

Endorsed on Cover: File No. 43,801 Minnesota, Supreme Court, Term No. 394 State of Minnesota ex rel. Charles Edwin Pearson, Appellant, vs. Probate Court of Ramsey County, Minnesota, and Hon. Michael F. Kinkead, Judge of said Probate Court of Ramsey County. Filed September 16, 1939. Term No. 394 O. T. 1939.